



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DEMETRIUS DAVIS,

Plaintiff,

v.

22-CV-554 (JLS) (LGF)

COUNTY OF ERIE,
ERIE COUNTY DEPARTMENT OF
PROBATION,

Defendant.

DECISION AND ORDER

Plaintiff Demetrius Davis commenced this action on July 7, 2022 in New York State Supreme Court, Erie County, alleging two causes of action, including under 42 U.S.C. § 1983. Dkt. 1-1. On July 18, 2022, Defendants removed this case to this Court. *See generally* Dkt. 1. On July 20, 2022, this Court referred this case to United States Magistrate Judge Leslie G. Foschio for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Dkt. 7.

Presently before the Court is Magistrate Judge Foschio's December 1, 2022 combined Report and Recommendation ("R&R") and Decision and Order (Dkt. 12) recommending that Defendants' motion to dismiss for failure to state a claim (Dkt. 5) be granted; denying Davis's cross-motion for leave to file the proposed amended complaint (Dkt. 9); and recommending that Davis be permitted to file an amended

complaint asserting a federal Section 1983 action against Vidal. *See generally* Dkt.

12. Objections to the R&R were due by December 15, 2022, but none was filed.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

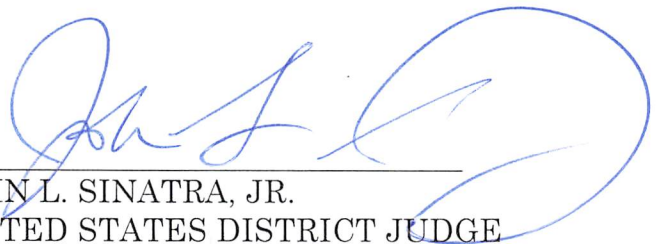
This Court has reviewed the relevant record and Judge Foschio's R&R for error. Finding none, and in the absence of any objections, this Court accepts and adopts Judge Foschio's recommendations to grant Defendants' motion to dismiss (Dkt. 5); to dismiss the claims against Defendants Erie County and Erie County Department of Probation with prejudice and without leave to replead; and to permit Plaintiff to file an amended complaint asserting a federal Section 1983 claim against Vidal, consistent with the R&R. Further, as set forth in the R&R, Plaintiff's motion for leave to file the proposed amended complaint (Dkt. 9) is denied.

For the reasons stated above and in Judge Foschio's R&R, Defendants' motion to dismiss (Dkt. 5) is GRANTED such that the claims asserted against Defendants Erie County and Erie County Department of Probation are dismissed with prejudice and without leave to replead; and Plaintiff's cross-motion for leave to file the proposed amended complaint (Dkt. 9) is DENIED. As set forth in the R&R,

Plaintiff is permitted to file an amended complaint asserting a federal Section 1983 claim against Vidal, **no later than 21 days after the date of this Decision and Order**. The case is referred back to Judge Foschio for further proceedings consistent with the referral order in this case.

SO ORDERED.

Dated: January 10, 2023
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE